**SHIN MIN DAILY NEWS (M) SDN. BHD.**

**v.**

**TAN CHONG HIN**

HIGH COURT MALAYA, PENANG
WAN ADNAN J
[CIVIL APPEAL NO. 16-4-1987]
26 JANUARY 1989

***LABOUR LAW:*** *Appeal against decision of labour officer - Respondent awarded a sum of RM2,153.16 on termination - Appellant alleged that the labour officer had erred in law in adjudication on the merits of the grounds of the dismissal - Whether labour officer had jurisdiction to hold the enquiry.*

The respondent was employed by the appellant and on the respondent's refusal to be transferred to Kuala Lumpur the respondent's services were terminated. The respondent alleged that his contract of employment did not make him liable to be transferred.

An enquiry was held by the labour officer who found in favour of the respondent and awarded him a sum of RM2,153.16 which was made up of indemnity *in lieu* of notice, under payment of wages for August 1986 and termination benefits.

The appellant alleged that the labour officer had acted in excess of jurisdiction in adjudicating on the validity of the respondent's dismissal which was on the grounds of misconduct.

**Held:**

**[1]** That in respect of the indemnity *in lieu* of notice the labour officer did not make any finding of misconduct as this question did not arise.

**[2]** In the claim for termination benefits, the validity of dismissal or misconduct was likewise not in issue.

**[3]** The labour officer therefore had the jurisdiction to hold the enquiry and make the award.

*[Appeal dismissed with costs.]*

**Cases referred to:**
*Rajaretnam Palaniandy v. Amalgamated Properties & Industries [1988] SCR 440*
*Nylex (M) Sdn. Bhd. v. Alias bin Chek [1985] CLJ (Rep) 602*

**Legislation referred to:**
Employment Act 1955, ss. 12(3)(e), 69
Employment (Termination and Lay Off Benefits) Regulations 1980, reg. 4

*For the appellant - P. Jayasingam; M/s. Shearn Delamore & Co. & Drew & Napier*
*For the respondent - Shyama Narayanan Noir; M/s. Bala Mahesan & Co.*

**JUDGMENT**

**Wan Adnan Ismail J:**

This is an appeal against the decision of Pegawai Buruh Pulau Pinang.

The respondent was employed by the appellant as a confidential clerk at the appellant's branch office at No. 19, Green Hall, Penang. The letter of appointment is Exhibit C1 and the letter of confirmation is Exhibit C2. The appellant wanted to transfer the respondent to Kuala Lumpur. The respondent maintained that the appellant could not transfer him as under the

terms of the letter of appointment and confirmation he was not liable to be transferred. By letter dated 8 September 1988 (Exhibit C10) his service was terminated by the appellant. Upon complaint made the Pegawai Buruh found in favour of the respondent and ordered the appellant to pay the respondent the sum of RM2,153.16 made up as follows:

| | | |
|---|---|---|
| (a) | Indemnity *in lieu* of notice for 6 weeks | RM 889.00 |
| (b) | Underpayment of wages for August 1986 | RM 100.00 |
| (c) | Termination benefits | RM1164.16 |
| | Total | RM2153.16 |

The only ground of appeal proceeded before me was the additional ground allowed by the order of this Court on 13 July 1988 which is as follows:

> Further and/or in the alternative, having regard to s. 69 of the Employment Act 1955, the Pegawai Buruh erred in law and acted in excess of and/or without jurisdiction in that he had no jurisdiction to determine or adjudicate on the respondent's dismissal which was on the grounds of misconduct.

I was referred the case of *Rajaretnam Palaniandy v. Amalgamated Properties & Industries* [1988] SCR 440 in which George Seah SCJ (as he then was) said referring to the judgment of Harun J (as he then was) in *Nylex (M) Sdn. Bhd. v. Alias bin Chek* [1985] CLJ (Rep) 602:

> ... we are in agreement with him that s. 69(1) of the Employment Act 1955 does not give any power to the director general or labour officer of the Ministry of Labour to question the validity of the dismissal of any employee by his employer.

A labour officer cannot hold an enquiry under s. 69 and adjudicate whenever the question of the validity of the dismissal of an employee is in issue. He has no power to determine whether or not there has been any misconduct.

The respondent's claim for indemnity *in lieu* of notice is under s. 12(3)(e) which read as follows:

> (3) Notwithstanding anything contained in sub-section (2) where the termination of service of the employee is attributable wholly or mainly to the facts that:
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> (a)
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> (b)
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> (c)
>
> (d)
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> (e) the employee has refused to accept his transfer to any other place of employment, unless his contract of service requires him to accept such transfer or
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> (f) the employee shall be entitled to and the employer shall give the employee notice of termination of service, and the length of such matter shall be not less than that provided under subsection (2) (a),(b) or (c) as the case may be, regardless of anything to the contrary contained in the contract of service.

Under this section the validity of dismissal is not in issue. The respondent's service was terminated because he refused to accept the transfer to another place. His contract of service did not require him to accept the transfer. There was no variation of his contract of service. He was appointed to the Penang Branch. The labour officer did not make any finding of misconduct. The question of misconduct did not arise. His finding was that the contract of

service did not require the respondent to accept the transfer. The respondent was entitled to six weeks notice under sub-section 2(b). Therefore the award of RM889 being indemnity *in lieu* of notice is correct.

In claim for termination benefits under reg. 4 of Employment (Termination and Lay-Off Benefits Regulation 1980, validity of dismissal or misconduct is also not an issue. The labour officer had made no finding on misconduct. He merely said

> the complainant had refused a transfer because there was no provision in his contract of service on the matter of transfer. It should not be regarded as misconduct as stipulated in reg. 4(1)(b).

I find that the labour officer had the jurisdiction to hold the enquiry and to make the awards that he made. I therefore dismissed the appeal with costs.

Also found at [1989] 1 CLJ 982